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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,978	06/26/2003	John D. Dobak III	103002	6407
7590	01/16/2008			
MAYER FORTKORT & WILLIAMS 251 NORTH AVENUE WEST 2ND FLOOR WESTFIELD, NJ 07090			EXAMINER JOHNSON III, HENRY M	
			ART UNIT 3739	PAPER NUMBER
			MAIL DATE 01/16/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/608,978	DOBAK ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Henry M. Johnson, III	3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 December 2007.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 and 6-14 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 and 6-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 June 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Response to Arguments***

Applicant's arguments filed December 3, 2007 with respect to 35 U.S.C. § 112 have been fully considered and are persuasive. The rejection of the claims has been withdrawn.

Applicant's arguments filed with respect to the 35 U.S.C. § 103 rejections have been fully considered but they are not persuasive. The arguments relating to the radially tabs not persuasive as the spacers of Hussein et al. for relative positioning of apparatus parts is interpreted as an alternative to the claimed tabs. They are disclosed as performing the same function. Applicant's argument with regard to Amplantz is moot as not rejection currently incorporates that prior art. KSR International verses TELEFLEX Inc., as stated previously, acknowledges the combination of existing features of analogous art as a natural progression within the existing threshold of a skilled artesian.

The objection to the drawings is withdrawn.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the

time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4 and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,868,735 to Lafontaine in view of U.S. Patent 5,106,360 to Ishiwara et al. and further in view of U.S. Patent 4,445,892 to Hussein et al. Lafontaine discloses a device to treat tissue comprising an outer tube (Fig. 2, # 28), an inner tube (Fig. 2, # 32) disposed at least partially within the outer tube and a dual balloon (Fig. 2, 14) and a lumen for a guidewire. A marker band is disclosed (Fig. 2, # 36). The inner and outer balloons are distally connected to the inner tube and the proximal end of the outer balloon is connected to the outer tube and the proximal end of the inner balloon is connected to the inner tube. The balloons form a volume between. The inner balloon has supply and return lumens disclosed, however they are exterior to the inner tube. The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950). Lafontaine does not disclose a lumen to fill the volume between the balloons. Ishiwara et al. teach a catheter device with concentric balloons defining a volume between (Fig. 5) with a lumen in fluid connection with the volume (Fig. 5, # 30). The space interior to the inner balloon has both a supply and return lumen. Neither Lafontaine nor Ishiwara et al. teach spacers for maintaining position of elements. Hussein et al. disclose a dual balloon catheter (abstract) with inner and outer tubes wherein spacers are provided to center the inner tube within the outer tube and allow fluid flow around the inner tube (Fig 6, #s 308 & 310). Hussein et al. teach the use of perfluorocarbon for cooling and Lafontaine teaches the use of Freon. The collection of Lafontaine, Ishiwara et al. and Hussein et al. represent numerous features

common in balloon catheters. It would have been obvious to one skilled in the art to combine the various features of Lafontaine, Ishiwara et al. and Hussein et al. to logically advance the art based on ordinary innovation.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,868,735 to Lafontaine in view of U.S. Patent 5,106,360 to Ishiwara et al. and further in view of U.S. Patent 4,445,892 to Hussein et al. as applied to claim 8 above and further in view of U.S. Patent 6,063,101 to Jacobsen et al. Lafontaine, Ishiwara et al. and Hussein et al. teach all of the limitations of the claim except a fluid contrast media. Jacobsen et al. teach that it is old and well known in the art to provide a contrast media as an inflation fluid for a balloon catheter. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a fluid contrast media in the invention of Lafontaine/Ishiwara et al. Hussein et al. in the fluid for inflating the balloon.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,868,735 to Lafontaine in view of U.S. Patent 5,106,360 to Ishiwara et al. and further in view of U.S. Patent 4,445,892 to Hussein et al. as applied to claim 8 above and further in view of U.S. Patent 6,497,721 to Ginsburg, et al. Lafontaine, Ishiwara et al. and Hussein et al. are discussed above, but do not teach specific pumps for the fluid delivery. Ginsburg et al. disclose a similar device and teach that it is old and well known in the art to use a variety of different pumps to circulate the heat exchange fluid (col. 24 lines 10-14). Each of the pumps disclosed by Ginsburg et al. may be substituted one for the other. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a gear pump for fluid delivery in the invention of Lafontaine/Ishiwara et al./Hussein et al. particularly in view of the teaching of Ginsburg et al. that a substitution as such would be proper.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Henry M. Johnson, III  
Primary Examiner  
Art Unit 3739